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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/609,231	06/30/2000	Jeffrey Bryson	704-P-1-USA	2817

7590 03/23/2004

Drummond & Duckworth
5000 BIRCH STREET
Suite 440
Newport Beach, CA 92660

EXAMINER

FADOK, MARK A

ART UNIT	PAPER NUMBER
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3625

DATE MAILED: 03/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/609,231

Applicant(s)

BRYSON, JEFFREY

Examiner

Mark Fadok

Art Unit

3625



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 and 39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-37 and 39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 June 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

The examiner is in receipt of applicant's response to office action mailed 9/7/2003, which was received, 12/22/2003. acknowledgement is made to the cancellation of claims 38,40 and 41 and the amendment of claims 37 and 39. Notation is made to the inadvertent use of DeSimone in the body of the rejection when Berstis should have been used as noted in the heading of the rejection. Applicant's arguments have been carefully considered, but were found not to be persuasive; therefore the previous rejection modified to clarify certain features is provided below:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al. (US 2002/0178069) in view of Berstis (6,570,870).

In regards to claims 1-41, Walker teaches all the limitations of the instant except as follows. Walker teaches a method for negotiating a Conditional Purchase Order between a buyer and a plurality of sellers in real time over the Internet. Walker also provides the means for consummating the sale (see Figures 1-9 and summary). Walker, however, does not specifically mention that buyer and seller have a separate means to

communicate through a voice channel. Berstis teaches a method for making a telephone call during a browsing session to a live operator to carry on further conversation regarding the current online activity (see entire document). It would be obvious to a person of ordinary skill in the art to include in Walker further negotiation capability by the means offered in Berstis, because this capability offers the buyer and seller another means for communication that can answer questions from the buyer and close transactions where a buyer feels a needs to communicate with a live person.

Response to Arguments

Applicant argues that neither Walker nor Berstis discloses the claimed feature of a real-time two-way data connection between buyers and sellers. The examiner disagrees and directs the applicant's attention to the page 2, para 31 of Walker. In this paragraph it is clearly stated that the CPO (priceline.com) is in fact the distributor/seller of the product and has the authority to accept any offer presented. It this connection between the priceline website and the customer that is the real time connection.

Applicant further argues that nether Walker nor Berstis discloses a network system including both "primary" and "virtual" sellers. As stated above Walker clearly discloses a real time "virtual" sales tool and as noted in the previous rejection lacked a voice connection for real time "primary" sales. Berstis teaches websites that have live operators associated therewith which are designated by reference numeral 46 (col 4, lines 45-67). Col 5, lines 62-67 of Berstis, states that websites typically provide access to live operators for any number of reasons e.g., to facilitate an electronic commerce

transaction, to answer questions about a product or order, to provide other customer assistance. Further the user has the option to use the website through "virtual" means (website order) or by selecting the "primary" option (col 7, lines 5-10, live operator icon).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Mark Fadok** whose telephone number is **(703) 605-4252**. The examiner can normally be reached Monday thru Thursday 8:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Vincent Millin** can be reached on **(703) 308-1065**.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **Receptionist** whose telephone number is **(703) 308-1113**.

Any response to this action should be mailed to:

Commissioner for Patents

P.O. Box 1450

Alexandria, Va. 22313-1450

or faxed to:

(703) 872-9306 [Official communications; including
After Final communications labeled
"Box AF"]

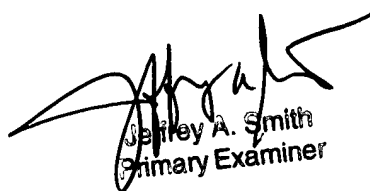
(703) 746-7206 [Informal/Draft communications, labeled
"PROPOSED" or "DRAFT"]

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive, Arlington, VA, 7th floor receptionist.



Mark Fadok

Patent Examiner



Jeffrey A. Smith
Primary Examiner